

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES**

**IN THE MATTER OF:**

████████████████████  
████████████████████  
████████████████████

Reg. No.: 201432106  
Issue No(s): 3005  
Case No.: ██████████  
Hearing Date: June 25, 2014  
County: Macomb (12)

**ADMINISTRATIVE LAW JUDGE:** Alice C. Elkin

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly; 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on June 25, 2014 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included: Respondent.

**ISSUES**

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for FAP?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on February 6, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report income.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is June 1, 2009 through February 28, 2010 (fraud period).
7. During the fraud period, Respondent was issued \$1800 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$189 in such benefits during this time period.
8. The Department alleges that Respondent received a FAP OI in the amount of \$1611.
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.

- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**
  - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$1000 or more, **or**
  - the total OI amount is less than \$1000, **and**
    - the group has a previous IPV, **or**
    - the alleged IPV involves FAP trafficking, **or**
    - the alleged fraud involves concurrent receipt of assistance (see BEM 222), **or**
    - the alleged fraud is committed by a state/government employee.

BAM 720 (May 2014), pp. 12-13.

### **Intentional Program Violation**

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (May 2014), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department alleges that Respondent committed an IPV concerning her FAP benefits because she intentionally failed to report her employment income.

Respondent began employment at [REDACTED] (Employer) on April 6, 2009 and received her first paycheck on April 21, 2009. Under Department policy, Respondent was required to report her employment within 10 days of her first paycheck, or by July 20, 2009 in this case. BAM 105 (April 2009), p. 7. The Department contends that Respondent never reported her income to the Department.

Respondent was at the hearing and testified that she went to the Department's Warren office shortly after she began employment and told her worker that she had started employment. Department policy provides that a change may be reported in person, by mail or by telephone. BAM 105, p. 8. The Department questioned Respondent concerning her statement that she went to the Warren office, pointing out that Respondent's local office was the Clinton Township office. The March 26, 2009 Notice of Case Action admitted into evidence confirms that, at the time at issue, Respondent's local office was the Clinton Township office.

However, in order to establish that a client has committed an IPV, the Department must establish that the client "committed, and intended to commit, an IPV." 7 CFR 273.16(e)(6); 7 CFR 273.16(c). Under the circumstances presented, where Respondent attempted to notify the Department concerning her employment, the Department has failed to establish by clear and convincing evidence that Respondent intentionally withheld information concerning her employment for purposes of maintaining FAP eligibility.

Thus, the Department has failed to establish that Respondent committed an IPV concerning her FAP benefits.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 2013), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

Because the Department failed to establish by clear and convincing evidence that Respondent committed a FAP IPV, Respondent is not subject to a disqualification from the FAP program.

### **Overissuance**

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the

benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (May 2014), p. 6; BAM 705 (May 2014), p. 6.

In this case, the Department alleges that Respondent received FAP benefits totaling \$1800 for June 2009 to February 2010 but she was only eligible for \$189 in FAP benefits during this period. Based on the 10-day reporting period, the 10-day processing period and the 12-day negative action period and in consideration of Respondent's receipt of her first paycheck on April 21, 2009, the Department properly began the OI period in June 2009. BAM 105, p. 7; BAM 720, p. 7. The Department presented a pending claim summary showing that Respondent received \$1800 in monthly FAP benefits from June 2009 to February 2010.

To establish the OI amount, the Department presented FAP OI budgets for each month between June 2009 and February 2010 showing the amount of benefits Respondent was eligible to receive if her earned income had been included in each month's budget. A review of the budgets shows that the Department properly calculated Respondent's actual income for each month at issue. BAM 720, p. 10. Respondent's testimony at the hearing established that she did not notify the correct local Department office of her employment income. Because the failure to properly budget Respondent's income was due to her error, she is not eligible for the earned income deduction. BAM 720, p. 10. A review of the budgets establishes that Respondent was eligible for only \$189 of the \$1800 she received.

Therefore, the Department has established a FAP OI of \$1611 and is entitled to recoup and/or collect this amount from Respondent.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI of program benefits in the amount of \$1611 from the FAP program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1611 in accordance with Department policy.



**Alice C. Elkin**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

2014-32106/ACE

Date Signed: July 14, 2014

Date Mailed: July 15, 2014

**NOTICE:** The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

ACE/tlf

cc: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]